

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:06-00213

JERMOLL BURT
PAULA SANTOS
CHRISTABELLE SANTOS

MEMORANDUM OPINION AND ORDER

A Rule 21(b) motion to transfer these proceedings to the Southern District of California has been filed by Christabelle Santos. The other two defendants have since joined in the motion. The United States has filed a response opposing transfer. The court conducted a hearing on the motion on June 4, 2007, and on July 11, 2007.

These three defendants have been indicted for conspiring to knowingly and intentionally distribute for remuneration 100 kilograms or more of marijuana. The offense is alleged to have occurred from July 2000 to December 7, 2004, at or near Charleston, West Virginia, within the Southern District of West Virginia and elsewhere. It is clear that venue is properly found in this district as well as the Southern District of California by virtue of overt acts of the alleged conspiracy

having occurred in both districts. Trial is scheduled for August 20, 2007.

The United States contends that the defendants shipped marijuana from California to the Philadelphia area where it was funneled directly to Matthew Clark who received the marijuana in Philadelphia and physically drove it to West Virginia. It is further alleged that at least one of the defendants was aware that West Virginia was the terminus of the marijuana. Matthew Clark was detected on September 21, 2004, sending \$30,000 in Western Union money orders or receipts to the address of a residence controlled or occupied by some or all of the defendants. Clark pled guilty to possession with intent to distribute marijuana for remuneration and was sentenced on July 11, 2006, to a term of thirty months imprisonment. It is further claimed by the United States that Matthew Clark sent money orders to the defendants from West Virginia in excess of \$100,000 over the course of the conspiracy. It is conceded by the United States that the conspiracy also involved the distribution of marijuana in California, as well as Pennsylvania and Maryland.

The court makes the following findings of fact relative to the motion to transfer by a preponderance of the evidence.

Location of Parties and Witnesses

The government witnesses include the following:

Matthew Clark, who is incarcerated at FCI Elkton, Elkton, Ohio

Sunil Irukulla, a Pennsylvania state prisoner

Marcus Jackson, a Maryland State Trooper

Mike Mosiniak, a Bucks County, Pennsylvania, Detective

Bob Negro, a Drug Enforcement Administration agent, Charleston, West Virginia

Tray Landis, West Virginia State Police Lab, South Charleston, West Virginia

Richard Theis, West Virginia State Police Lab, South Charleston, West Virginia

Stephen King, West Virginia State Police Lab, South Charleston, West Virginia

Dean Henderson, a Drug Enforcement Administration agent, San Diego area

TFO McGill, with the San Diego Narcotic Task Force

Officer Allen Randa, San Diego area

Officer Gomez, San Diego area

Officer Bukiri, San Diego area

Officer Reynolds, San Diego area

The defendants are all residents of the San Diego area in southern California and have been released on bond since their arraignment before United States Magistrate Judge Stanley in this district. Each of the defendants is represented by separate appointed counsel designated in this district six months or more ago as follows: Christabelle Santos on November 13, 2006; Paula Santos on December 21, 2006; and JERMOLL Burt on January 19, 2007. Their fact witnesses consist of the following, all located in the San Diego area:

George Anderson

Vena Anderson

Helen Burgos

Jennifer Burt

Elva Gonzales, age 10

Tiffany Rivera

Some or all of the six officers from the San Diego area listed above as the last six government witnesses

There are four character witnesses listed for Christabelle Santos and two character witnesses listed for Jermoll Burt, all from the San Diego area. It is noted that all three defendants are employed in the San Diego area. It is further noted that Paula Santos has an eight-year old son and

ten-year old daughter residing with her. After the hearing, as requested by the court, Tim C. Carrico, counsel for Paula Santos, advised by letter of July 17, 2007, which is hereby ORDERED filed, that the regular school year for Elva Gonzales, age 10, a proposed witness, begins August 29, 2007. Presumably, the same date applies for the two children of Paula Santos.

Location of events, records and documents

The pertinent events allegedly occurred, in about equal measure, in California and in this district when coupled with Philadelphia and Maryland. The United States is acquiring all germane records and documents located in the State of California and will make them available to the defendants. The relevant records of the alleged conspiracy arising in this district and adjoining states are also available here.

Employment Interruption and Expense to the Parties

Defendants' employment will be interrupted to some limited extent regardless of the district in which the case proceeds, though the interruption is apt to be somewhat greater if the case remains in West Virginia rather than transferred to California.

The expense to the defendants personally is of lesser consequence inasmuch as the expense of either situs will largely be borne by the United States in view of the indigency of the defendants.

Location of Counsel and Relative Accessibility of Place of Trial

All counsel for the government and the defendants are located in West Virginia. Transfer to California would require, at the least, appointment of new or additional counsel for the defendants.

Particularly inasmuch as the witnesses are essentially centered in each the San Diego area and the Southern District of West Virginia or relatively nearby areas, accessibility of the place of trial is largely a wash as between the witnesses since those in the one area must travel to the other, though more will come from California than from West Virginia.

Summary and Conclusions

The three defendants reside in California, having been released on bond to report for further proceedings in this district. Their fact witnesses consist of six individuals, all of whom are residents of California, together with some of the

California-based law enforcement officers among the six whom the government will be calling as witnesses as noted above. The defendants also suggest as many as six character witnesses although that number will be limited by the court following further consideration of both need and cumulative effect.

The government on the other hand has four witnesses from the Charleston, West Virginia, area, four witnesses from states bordering West Virginia and six law enforcement officers from the San Diego area, some of whom the defendants may wish to use.

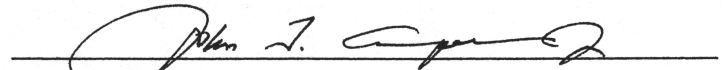
The location of events, records and documents is balanced between California and West Virginia. Although a greater number of the witnesses are from California than those in and near West Virginia, the government will see to the presence of the six law enforcement officers residing in California. The three defendants have been represented for anywhere from six to eight months by counsel appointed in West Virginia who should be ready for trial which is set for August 20, 2007. It would be unnecessarily disruptive now to transfer this case to the Southern District of California and redo much of that which has already transpired in preparing the case for

trial, all at needless expense and the waste of judicial resources.

The court concludes that, taking into account the convenience of the parties and the witnesses and the interest of justice, the proceedings in this case, including trial, are more appropriately conducted and concluded in this district. The motion to transfer is accordingly denied.

The Clerk is directed to forward copies of this order to the defendant, all counsel of record, the United States Probation Department, and the United States Marshal.

DATED: July 23, 2007


John T. Copenhaver, Jr.
United States District Judge